

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 231

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Elias Barela

AN ACT

RELATING TO POWERS OF ATTORNEY; ENACTING THE UNIFORM POWER OF
ATTORNEY ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

ARTICLE 1

GENERAL PROVISIONS

Section 101. SHORT TITLE.--This act may be cited as the
"Uniform Power of Attorney Act".

Section 102. DEFINITIONS.--As used in the Uniform Power
of Attorney Act:

A. "agent" means a person granted authority to act
for a principal under a power of attorney, whether denominated
an agent, attorney-in-fact or otherwise. The term includes an
original agent, co-agent, successor agent and a person to which
an agent's authority is delegated;

.164258.3

underscoring material = new
[bracketed material] = delete

underscoring material = new
[bracketed material] = delete

1 B. "durable", with respect to a power of attorney,
2 means not terminated by the principal's incapacity;

3 C. "electronic" means relating to technology having
4 electrical, digital, magnetic, wireless, optical,
5 electromagnetic or similar capabilities;

6 D. "good faith" means honesty in fact;

7 E. "incapacity" means inability of an individual to
8 manage the individual's estate or financial affairs, or both,
9 because:

10 (1) of gross mismanagement, as evidenced by
11 recent behavior, of the individual's income and resources or
12 the individual's medical inability to manage the individual's
13 income and resources that has led, or is likely in the near
14 future to lead, to financial vulnerability; or

15 (2) the individual is:

16 (a) missing;

17 (b) detained, including incarcerated in
18 a penal system; or

19 (c) outside the United States and unable
20 to return;

21 F. "person" means an individual, corporation,
22 business trust, estate, trust, partnership, limited liability
23 company, association, joint venture, public corporation,
24 government or governmental subdivision, agency or
25 instrumentality or any other legal or commercial entity;

.164258.3

underscoring material = new
[bracketed material] = delete

1 G. "power of attorney" means a writing or other
2 record that grants authority to an agent to act in the place of
3 the principal, whether or not the term "power of attorney" is
4 used;

5 H. "presently exercisable general power of
6 appointment", with respect to property or a property interest
7 subject to a power of appointment, means power exercisable at
8 the time in question to vest absolute ownership in the
9 principal individually, the principal's estate, the principal's
10 creditors or the creditors of the principal's estate. The term
11 includes a power of appointment not exercisable until the
12 occurrence of a specified event, the satisfaction of an
13 ascertainable standard or the passage of a specified period
14 only after the occurrence of the specified event, the
15 satisfaction of the ascertainable standard or the passage of
16 the specified period. The term does not include a power
17 exercisable in a fiduciary capacity or only by will;

18 I. "principal" means an individual who grants
19 authority to an agent in a power of attorney;

20 J. "property" means anything that may be the
21 subject of ownership, whether real or personal, or legal or
22 equitable, or any interest or right therein;

23 K. "record" means information that is inscribed on
24 a tangible medium or that is stored in an electronic or other
25 medium and is retrievable in perceivable form;

.164258.3

underscored material = new
[bracketed material] = delete

1 L. "sign" means with present intent to authenticate
2 or adopt a record:

- 3 (1) to execute or adopt a tangible symbol; or
4 (2) to attach to or logically associate with
5 the record an electronic sound, symbol or process;

6 M. "state" means a state of the United States, the
7 District of Columbia, Puerto Rico, the United States Virgin
8 Islands or any territory or insular possession subject to the
9 jurisdiction of the United States; and

10 N. "stocks and bonds" means stocks, bonds, mutual
11 funds and all other types of securities and financial
12 instruments, whether held directly, indirectly or in any other
13 manner. The term does not include commodity futures contracts
14 and call or put options on stocks or stock indexes.

15 Section 103. APPLICABILITY.--The Uniform Power of
16 Attorney Act applies to all powers of attorney except:

17 A. a power to the extent it is coupled with an
18 interest in the subject of the power, including a power given
19 to or for the benefit of a creditor in connection with a credit
20 transaction;

21 B. a power to make health care decisions;

22 C. a proxy or other delegation to exercise voting
23 rights or management rights with respect to an entity; and

24 D. a power created on a form prescribed by a
25 government or governmental subdivision, agency or

.164258.3

underscoring material = new
[bracketed material] = delete

1 instrumentality for a governmental purpose.

2 Section 104. POWER OF ATTORNEY IS DURABLE.--A power of
3 attorney created under the Uniform Power of Attorney Act is
4 durable unless it expressly provides that it is terminated by
5 the incapacity of the principal.

6 Section 105. EXECUTION OF POWER OF ATTORNEY.--A power of
7 attorney must be signed by the principal or in the principal's
8 conscious presence by another individual directed by the
9 principal to sign the principal's name on the power of
10 attorney. A signature on a power of attorney is presumed to be
11 genuine if the principal acknowledges the signature before a
12 notary public or other individual authorized by law to take
13 acknowledgments.

14 Section 106. VALIDITY OF POWER OF ATTORNEY.--

15 A. A power of attorney executed in this state on or
16 after July 1, 2007 is valid if its execution complies with
17 Section 105 of the Uniform Power of Attorney Act.

18 B. A power of attorney executed in this state
19 before July 1, 2007 is valid if its execution complied with the
20 law of this state as it existed at the time of execution.

21 C. A power of attorney executed other than in this
22 state is valid in this state if, when the power of attorney was
23 executed, the execution complied with:

24 (1) the law of the jurisdiction that
25 determines the meaning and effect of the power of attorney

.164258.3

underscored material = new
[bracketed material] = delete

1 pursuant to Section 107 of the Uniform Power of Attorney Act;
2 or

3 (2) the requirements for a military power of
4 attorney pursuant to 10 U.S.C. Section 1044b, as amended.

5 D. Except as otherwise provided by statute other
6 than the Uniform Power of Attorney Act, a photocopy or
7 electronically transmitted copy of an original power of
8 attorney has the same effect as the original.

9 Section 107. MEANING AND EFFECT OF POWER OF ATTORNEY.--
10 The meaning and effect of a power of attorney is determined by
11 the law of the jurisdiction indicated in the power of attorney
12 and, in the absence of an indication of jurisdiction, by the
13 law of the jurisdiction in which the power of attorney was
14 executed.

15 Section 108. NOMINATION OF CONSERVATOR OR GUARDIAN--
16 RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.--

17 A. In a power of attorney, a principal may nominate
18 a conservator of the principal's estate or guardian of the
19 principal's person for consideration by the court if protective
20 proceedings for the principal's estate or person are begun
21 after the principal executes the power of attorney. Except for
22 good cause shown or disqualification, the court shall make its
23 appointment in accordance with the principal's most recent
24 nomination.

25 B. If, after a principal executes a power of

.164258.3

underscored material = new
[bracketed material] = delete

1 attorney, a court appoints a conservator of the principal's
2 estate or other fiduciary charged with the management of some
3 or all of the principal's property, the agent is accountable to
4 the fiduciary as well as to the principal. The power of
5 attorney is not terminated and the agent's authority continues
6 unless limited, suspended or terminated by the court after
7 notice to, and an opportunity to be heard by, the agent and the
8 principal.

9 Section 109. WHEN POWER OF ATTORNEY EFFECTIVE.--

10 A. A power of attorney is effective when executed
11 unless the principal provides in the power of attorney that it
12 becomes effective at a future date or upon the occurrence of a
13 future event or contingency.

14 B. If a power of attorney becomes effective upon
15 the occurrence of a future event or contingency, the principal,
16 in the power of attorney, may authorize one or more persons to
17 determine in a writing or other record that the event or
18 contingency has occurred.

19 C. If a power of attorney becomes effective upon
20 the principal's incapacity and the principal has not authorized
21 a person to determine whether the principal is incapacitated,
22 or the person authorized is unable or unwilling to make the
23 determination, the power of attorney becomes effective upon a
24 determination in a writing or other record by:

25 (1) a physician or licensed psychologist that

.164258.3

underscored material = new
[bracketed material] = delete

1 the principal is incapacitated within the meaning of Paragraph
2 (1) of Subsection E of Section 102 of the Uniform Power of
3 Attorney Act; or

4 (2) an attorney at law, a judge or an
5 appropriate governmental official that the principal is
6 incapacitated within the meaning of Paragraph (2) of Subsection
7 E of Section 102 of the Uniform Power of Attorney Act.

8 D. A person authorized by the principal in the
9 power of attorney to determine that the principal is
10 incapacitated may act as the principal's personal
11 representative pursuant to the federal Health Insurance
12 Portability and Accountability Act, Sections 1171 through 1179
13 of the Social Security Act, 42 U.S.C. Section 1320d, as
14 amended, and applicable regulations to obtain access to the
15 principal's health care information and communicate with the
16 principal's health care provider.

17 Section 110. TERMINATION OF POWER OF ATTORNEY OR AGENT'S
18 AUTHORITY.--

19 A. A power of attorney terminates when:

- 20 (1) the principal dies;
- 21 (2) the principal becomes incapacitated, if
22 the power of attorney is not durable;
- 23 (3) the principal revokes the power of
24 attorney;
- 25 (4) the power of attorney provides that it

.164258.3

1 terminates;

2 (5) the purpose of the power of attorney is
3 accomplished; or

4 (6) the principal revokes the agent's
5 authority or the agent dies, becomes incapacitated or resigns
6 and the power of attorney does not provide for another agent to
7 act under the power of attorney.

8 B. An agent's authority terminates when:

9 (1) the principal revokes the authority;

10 (2) the agent dies, becomes incapacitated or
11 resigns;

12 (3) an action is filed for the dissolution or
13 annulment of the agent's marriage to the principal or their
14 legal separation, unless the power of attorney otherwise
15 provides; or

16 (4) the power of attorney terminates.

17 C. Unless the power of attorney otherwise provides,
18 an agent's authority is exercisable until the authority
19 terminates under Subsection B of this section, notwithstanding
20 a lapse of time since the execution of the power of attorney.

21 D. Termination of an agent's authority or of a
22 power of attorney is not effective as to the agent or another
23 person that, without actual knowledge of the termination, acts
24 in good faith under the power of attorney. An act so
25 performed, unless otherwise invalid or unenforceable, binds the

underscoring material = new
[bracketed material] = delete

1 principal and the principal's successors in interest.

2 E. Incapacity of the principal of a power of
3 attorney that is not durable does not revoke or terminate the
4 power of attorney as to an agent or other person that, without
5 actual knowledge of the incapacity, acts in good faith under
6 the power of attorney. An act so performed, unless otherwise
7 invalid or unenforceable, binds the principal and the
8 principal's successors in interest.

9 F. The execution of a power of attorney does not
10 revoke a power of attorney previously executed by the principal
11 unless the subsequent power of attorney provides that the
12 previous power of attorney is revoked or that all other powers
13 of attorney are revoked.

14 Section 111. CO-AGENTS AND SUCCESSOR AGENTS.--

15 A. A principal may designate two or more persons to
16 act as co-agents. Unless the power of attorney otherwise
17 provides, each co-agent may exercise its authority
18 independently.

19 B. A principal may designate one or more successor
20 agents to act if an agent resigns, dies, becomes incapacitated,
21 is not qualified to serve or declines to serve. A principal
22 may grant authority to designate one or more successor agents
23 to an agent or other person designated by name, office or
24 function. Unless the power of attorney otherwise provides, a
25 successor agent:

.164258.3

underscored material = new
[bracketed material] = delete

1 (1) has the same authority as that granted to
2 the original agent; and

3 (2) may not act until all predecessor agents
4 have resigned, died, become incapacitated, are no longer
5 qualified to serve or have declined to serve.

6 C. Except as otherwise provided in the power of
7 attorney and Subsection D of this section, an agent that does
8 not participate in or conceal a breach of fiduciary duty
9 committed by another agent, including a predecessor agent, is
10 not liable for the actions of the other agent.

11 D. An agent that has actual knowledge of a breach
12 or imminent breach of fiduciary duty by another agent shall
13 notify the principal and, if the principal is incapacitated,
14 take any action reasonably appropriate in the circumstances to
15 safeguard the principal's best interest. An agent that fails
16 to notify the principal or take action as required by this
17 subsection is liable for the reasonably foreseeable damages
18 that could have been avoided if the agent had notified the
19 principal or taken such action.

20 Section 112. REIMBURSEMENT AND COMPENSATION OF AGENT.--
21 Unless the power of attorney otherwise provides, an agent is
22 entitled to reimbursement of expenses reasonably incurred on
23 behalf of the principal and to compensation that is reasonable
24 under the circumstances.

25 Section 113. AGENT'S ACCEPTANCE.--Except as otherwise

.164258.3

underscored material = new
[bracketed material] = delete

1 provided in the power of attorney, a person accepts appointment
2 as an agent under a power of attorney by exercising authority
3 or performing duties as an agent or by any other assertion or
4 conduct indicating acceptance.

5 Section 114. AGENT'S DUTIES.--

6 A. Notwithstanding provisions in the power of
7 attorney, an agent that has accepted appointment shall:

8 (1) act in accordance with the principal's
9 reasonable expectations to the extent actually known by the
10 agent and, otherwise, in the principal's best interest;

11 (2) act in good faith; and

12 (3) act only within the scope of authority
13 granted in the power of attorney.

14 B. Except as otherwise provided in the power of
15 attorney, an agent that has accepted appointment shall:

16 (1) act loyally for the principal's benefit;

17 (2) act so as not to create a conflict of
18 interest that impairs the agent's ability to act impartially in
19 the principal's best interest;

20 (3) act with the care, competence and
21 diligence ordinarily exercised by agents in similar
22 circumstances;

23 (4) keep a record of all receipts,
24 disbursements and transactions made on behalf of the principal;

25 (5) cooperate with a person that has authority

.164258.3

1 to make health care decisions for the principal to carry out
2 the principal's reasonable expectations to the extent actually
3 known by the agent and otherwise act in the principal's best
4 interest; and

5 (6) attempt to preserve the principal's estate
6 plan, to the extent actually known by the agent, if preserving
7 the plan is consistent with the principal's best interest based
8 on all relevant factors, including:

9 (a) the value and nature of the
10 principal's property;

11 (b) the principal's foreseeable
12 obligations and need for maintenance;

13 (c) minimization of taxes, including
14 income, estate, inheritance, generation-skipping transfer and
15 gift taxes; and

16 (d) eligibility for a benefit, a program
17 or assistance under a statute or regulation.

18 C. An agent that acts in good faith is not liable
19 to any beneficiary of the principal's estate plan for failure
20 to preserve the plan.

21 D. An agent that acts with care, competence and
22 diligence for the best interest of the principal is not liable
23 solely because the agent also benefits from the act or has an
24 individual or conflicting interest in relation to the property
25 or affairs of the principal.

underscoring material = new
[bracketed material] = delete

1 E. If an agent is selected by the principal because
2 of special skills or expertise possessed by the agent or in
3 reliance on the agent's representation that the agent has
4 special skills or expertise, the special skills or expertise
5 must be considered in determining whether the agent has acted
6 with care, competence and diligence under the circumstances.

7 F. Absent a breach of duty to the principal, an
8 agent is not liable if the value of the principal's property
9 declines.

10 G. An agent that exercises authority to delegate to
11 another person the authority granted by the principal or that
12 engages another person on behalf of the principal is not liable
13 for an act, error of judgment or default of that person if the
14 agent exercises care, competence and diligence in selecting and
15 monitoring the person.

16 H. Except as otherwise provided in the power of
17 attorney, an agent is not required to disclose receipts,
18 disbursements or transactions conducted on behalf of the
19 principal unless ordered by a court or requested by the
20 principal, a guardian, a conservator, another fiduciary acting
21 for the principal, a governmental agency having authority to
22 protect the welfare of the principal or, upon the death of the
23 principal, by the personal representative or successor in
24 interest of the principal's estate. If so requested, within
25 thirty days the agent shall comply with the request or provide

.164258.3

underscored material = new
[bracketed material] = delete

1 a writing or other record substantiating why additional time is
2 needed and shall comply with the request within an additional
3 thirty days.

4 Section 115. EXONERATION OF AGENT.--A provision in a
5 power of attorney relieving an agent of liability for breach of
6 duty is binding on the principal and the principal's successors
7 in interest except to the extent the provision:

8 A. relieves the agent of liability for breach of
9 duty committed dishonestly, with an improper motive or with
10 reckless indifference to the purposes of the power of attorney
11 or the best interest of the principal; or

12 B. was inserted as a result of an abuse of a
13 confidential or fiduciary relationship with the principal.

14 Section 116. JUDICIAL RELIEF.--

15 A. The following persons may petition a court to
16 construe a power of attorney or review the agent's conduct and
17 grant appropriate relief:

18 (1) the principal or the agent;

19 (2) a guardian, conservator or other fiduciary
20 acting for the principal;

21 (3) a person authorized to make health care
22 decisions for the principal;

23 (4) the principal's spouse, parent or
24 descendant;

25 (5) an individual who would qualify as a

.164258.3

underscored material = new
[bracketed material] = delete

1 presumptive heir of the principal;

2 (6) a person named as a beneficiary to receive
3 any property, benefit or contractual right on the principal's
4 death or as a beneficiary of a trust created by or for the
5 principal that has a financial interest in the principal's
6 estate;

7 (7) a governmental agency having regulatory
8 authority to protect the welfare of the principal;

9 (8) the principal's caregiver or another
10 person that demonstrates sufficient interest in the principal's
11 welfare; and

12 (9) a person asked to accept the power of
13 attorney.

14 B. Upon motion by the principal, the court shall
15 dismiss a petition filed under this section, unless the court
16 finds that the principal lacks capacity to revoke the agent's
17 authority or the power of attorney.

18 Section 117. AGENT'S LIABILITY.--An agent that violates
19 the Uniform Power of Attorney Act is liable to the principal or
20 the principal's successors in interest for the amount required
21 to:

22 A. restore the value of the principal's property to
23 what it would have been had the violation not occurred; and

24 B. reimburse the principal or the principal's
25 successors in interest for the attorney fees and costs paid on

.164258.3

underscored material = new
[bracketed material] = delete

1 the agent's behalf.

2 Section 118. AGENT'S RESIGNATION--NOTICE.--Unless the
3 power of attorney provides a different method for an agent's
4 resignation, an agent may resign by giving notice to the
5 principal and, if the principal is incapacitated:

6 (1) to the conservator or guardian, if one has
7 been appointed for the principal, and a co-agent or successor
8 agent; or

9 (2) if there is no person described in
10 Paragraph (1) of this subsection, to:

11 (a) the principal's caregiver;

12 (b) another person reasonably believed
13 by the agent to have sufficient interest in the principal's
14 welfare; or

15 (c) a governmental agency having
16 authority to protect the welfare of the principal.

17 Section 119. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED
18 POWER OF ATTORNEY.--

19 A. For purposes of this section and Section 120 of
20 the Uniform Power of Attorney Act, "acknowledged" means
21 purportedly verified before a notary public or other individual
22 authorized to take acknowledgments.

23 B. A person that in good faith accepts an
24 acknowledged power of attorney without actual knowledge that
25 the signature is not genuine may rely upon the presumption

.164258.3

1 under Section 105 of the Uniform Power of Attorney Act that the
2 signature is genuine.

3 C. A person that in good faith accepts an
4 acknowledged power of attorney without actual knowledge that
5 the power of attorney is void, invalid or terminated that the
6 purported agent's authority is void, invalid or terminated or
7 that the agent is exceeding or improperly exercising the
8 agent's authority may rely upon the power of attorney as if the
9 power of attorney were genuine, valid and still in effect, the
10 agent's authority were genuine, valid and still in effect and
11 the agent had not exceeded and had properly exercised the
12 authority.

13 D. A person that is asked to accept an acknowledged
14 power of attorney may request, and rely upon, without further
15 investigation:

16 (1) an agent's certification under penalty of
17 perjury of any factual matter concerning the principal, agent
18 or power of attorney;

19 (2) an English translation of the power of
20 attorney if the power of attorney contains, in whole or in
21 part, language other than English; and

22 (3) an opinion of counsel as to any matter of
23 law concerning the power of attorney if the person making the
24 request provides in a writing or other record the reason for
25 the request.

underscored material = new
[bracketed material] = delete

1 E. An English translation or an opinion of counsel
2 requested under this section must be provided at the
3 principal's expense unless the request is made more than seven
4 business days after the power of attorney is presented for
5 acceptance.

6 F. For purposes of this section and Section 120 of
7 the Uniform Power of Attorney Act, a person that conducts
8 activities through employees is without actual knowledge of a
9 fact relating to a power of attorney, a principal or an agent
10 if the employee conducting the transaction involving the power
11 of attorney is without actual knowledge of the fact.

12 Section 120. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED
13 POWER OF ATTORNEY.--

14 A. As used in this section, "statutory form power
15 of attorney" means a power of attorney substantially in the
16 form provided in Section 301 of the Uniform Power of Attorney
17 Act or that meets the requirements for a military power of
18 attorney pursuant to 10 U.S.C. Section 1046, as amended.

19 B. Except as otherwise provided in Subsection C of
20 this section:

21 (1) a person shall either accept an
22 acknowledged statutory form power of attorney or request a
23 certification, a translation or an opinion of counsel under
24 Subsection B of Section 119 of the Uniform Power of Attorney
25 Act no later than seven business days after presentation of the

.164258.3

1 power of attorney for acceptance;

2 (2) if a person requests a certification, a
3 translation or an opinion of counsel under Subsection D of
4 Section 119 of the Uniform Power of Attorney Act, the person
5 shall accept the statutory form power of attorney no later than
6 five business days after receipt of the certification, the
7 translation or an opinion of counsel; and

8 (3) a person shall not require an additional
9 or different form of power of attorney for authority granted in
10 the statutory form power of attorney presented.

11 C. A person is not required to accept an
12 acknowledged statutory form power of attorney if:

13 (1) the person is not otherwise required to
14 engage in a transaction with the principal in the same
15 circumstances;

16 (2) engaging in a transaction with the agent
17 or the principal in the same circumstances would be
18 inconsistent with federal law;

19 (3) the person has actual knowledge of the
20 termination of the agent's authority or of the power of
21 attorney before exercise of the power;

22 (4) a request for a certification, a
23 translation or an opinion of counsel under Subsection D of
24 Section 119 of the Uniform Power of Attorney Act is refused;

25 (5) the person in good faith believes that the

underscored material = new
[bracketed material] = delete

1 power of attorney is not valid or that the agent does not have
2 the authority to perform the act requested, whether or not a
3 certification, a translation or an opinion of counsel under
4 Subsection D of Section 119 of the Uniform Power of Attorney
5 Act has been requested or provided; or

6 (6) the person makes, or has actual knowledge
7 that another person has made, a report to the adult protective
8 services division of the aging and long-term services
9 department stating a good faith belief that the principal may
10 be subject to physical or financial abuse, neglect,
11 exploitation or abandonment by the agent or a person acting for
12 or with the agent.

13 D. A person that refuses in violation of this
14 section to accept an acknowledged statutory form power of
15 attorney is subject to:

16 (1) a court order mandating acceptance of the
17 power of attorney; and

18 (2) liability for reasonable attorney fees and
19 costs incurred in any action or proceeding that confirms the
20 validity of the power of attorney or mandates acceptance of the
21 power of attorney.

22 Section 121. PRINCIPLES OF LAW AND EQUITY.--Unless
23 displaced by a provision of the Uniform Power of Attorney Act,
24 the principles of law and equity supplement that act.

25 Section 122. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS

.164258.3

underscoring material = new
[bracketed material] = delete

1 AND ENTITIES.--The Uniform Power of Attorney Act does not
2 supersede any other law applicable to financial institutions or
3 other entities, and the other law controls if inconsistent with
4 that act.

5 Section 123. REMEDIES UNDER OTHER LAW.--The remedies
6 under the Uniform Power of Attorney Act are not exclusive and
7 do not abrogate any right or remedy under the law of this state
8 other than that act.

9 ARTICLE 2
10 AUTHORITY

11 Section 201. AUTHORITY THAT REQUIRES SPECIFIC GRANT--
12 GRANT OF GENERAL AUTHORITY.--

13 A. An agent under a power of attorney may do the
14 following on behalf of the principal or with the principal's
15 property only if the power of attorney expressly grants the
16 agent the authority and exercise of the authority is not
17 otherwise prohibited by another agreement or instrument to
18 which the authority or property is subject:

- 19 (1) create, amend, revoke or terminate an
- 20 inter vivos trust;
- 21 (2) make a gift;
- 22 (3) create or change rights of survivorship;
- 23 (4) create or change a beneficiary
- 24 designation;
- 25 (5) delegate authority granted under the power

underscored material = new
[bracketed material] = delete

1 of attorney;

2 (6) waive the principal's right to be a
3 beneficiary of a joint and survivor annuity, including a
4 survivor benefit under a retirement plan;

5 (7) exercise fiduciary powers that the
6 principal has authority to delegate; or

7 (8) disclaim property, including a power of
8 appointment.

9 B. Notwithstanding a grant of authority to do an
10 act described in Subsection A of this section, unless the power
11 of attorney otherwise provides, an agent that is not an
12 ancestor, spouse or descendant of the principal shall not
13 exercise authority under a power of attorney to create in the
14 agent, or in an individual to whom the agent owes a legal
15 obligation of support, an interest in the principal's property,
16 whether by gift, right of survivorship, beneficiary
17 designation, disclaimer or otherwise.

18 C. Subject to Subsections A, B, D and E of this
19 section, if a power of attorney grants to an agent authority to
20 do all acts that a principal could do, the agent has the
21 general authority described in Sections 204 through 216 of the
22 Uniform Power of Attorney Act.

23 D. Unless the power of attorney otherwise provides,
24 a grant of authority to make a gift is subject to the
25 provisions of Section 217 of the Uniform Power of Attorney Act.

.164258.3

underscoring material = new
[bracketed material] = delete

1 E. Subject to Subsections A, B and D of this
2 section, if the subjects over which authority is granted in a
3 power of attorney are similar or overlap, the broadest
4 authority controls.

5 F. Authority granted in a power of attorney is
6 exercisable with respect to property that the principal has
7 when the power of attorney is executed or acquires later,
8 whether or not the property is located in this state and
9 whether or not the authority is exercised or the power of
10 attorney is executed in this state.

11 G. An act performed by an agent pursuant to a power
12 of attorney has the same effect and inures to the benefit of
13 and binds the principal and the principal's successors in
14 interest as if the principal had performed the act.

15 Section 202. INCORPORATION OF AUTHORITY.--

16 A. An agent has authority described in this article
17 if the power of attorney refers to general authority with
18 respect to the descriptive term for the subjects stated in
19 Sections 204 through 217 of the Uniform Power of Attorney Act
20 or cites the section in which the authority is described.

21 B. A reference in a power of attorney to general
22 authority with respect to the descriptive term for a subject in
23 Sections 204 through 217 of the Uniform Power of Attorney Act
24 or a citation to a section of Sections 204 through 217 of that
25 act incorporates the entire section as if it were set out in

.164258.3

underscored material = new
[bracketed material] = delete

1 full in the power of attorney.

2 C. A principal may modify authority incorporated by
3 reference.

4 Section 203. CONSTRUCTION OF AUTHORITY GENERALLY.--Except
5 as otherwise provided in the power of attorney, by executing a
6 power of attorney that incorporates by reference a subject
7 described in Sections 204 through 217 of the Uniform Power of
8 Attorney Act or that grants to an agent authority to do all
9 acts that a principal could do pursuant to Subsection C of
10 Section 201 of that act, a principal authorizes the agent, with
11 respect to that subject, to:

12 A. demand, receive and obtain by litigation or
13 otherwise, money or another thing of value to which the
14 principal is, may become or claims to be entitled, and
15 conserve, invest, disburse or use anything so received or
16 obtained for the purposes intended;

17 B. contract in any manner with any person, on terms
18 agreeable to the agent, to accomplish a purpose of a
19 transaction and perform, rescind, cancel, terminate, reform,
20 restate, release or modify the contract or another contract
21 made by or on behalf of the principal;

22 C. execute, acknowledge, seal, deliver, file or
23 record any instrument or communication the agent considers
24 desirable to accomplish a purpose of a transaction, including
25 creating at any time a schedule listing some or all of the

.164258.3

underscoring material = new
[bracketed material] = delete

1 principal's property and attaching it to the power of attorney;

2 D. initiate, participate in, submit to alternative
3 dispute resolution, settle, oppose or propose or accept a
4 compromise with respect to a claim existing in favor of or
5 against the principal or intervene in litigation relating to
6 the claim;

7 E. seek on the principal's behalf the assistance of
8 a court or other governmental agency to carry out an act
9 authorized in the power of attorney;

10 F. engage, compensate and discharge an attorney,
11 accountant, discretionary investment manager, expert witness or
12 other advisor;

13 G. prepare, execute and file a record, report or
14 other document to safeguard or promote the principal's interest
15 under a statute or regulation;

16 H. communicate with any representative or employee
17 of a government or governmental subdivision, agency or
18 instrumentality on behalf of the principal;

19 I. access communications intended for and
20 communicate on behalf of the principal, whether by mail,
21 electronic transmission, telephone or other means; and

22 J. do any lawful act with respect to the subject
23 and all property related to the subject.

24 Section 204. REAL PROPERTY.--Unless the power of attorney
25 otherwise provides, language in a power of attorney granting

.164258.3

underscored material = new
[bracketed material] = delete

1 general authority with respect to real property authorizes the
2 agent to:

3 A. demand, buy, lease, receive, accept as a gift or
4 as security for an extension of credit or otherwise acquire or
5 reject an interest in real property or a right incident to real
6 property;

7 B. sell, exchange, convey with or without
8 covenants, representations or warranties, quitclaim, release,
9 surrender, retain title for security, encumber, partition,
10 consent to partitioning, subject to an easement or covenant,
11 subdivide, apply for zoning or other governmental permits, plat
12 or consent to platting, develop, grant an option concerning,
13 lease, sublease, contribute to an entity in exchange for an
14 interest in that entity or otherwise grant or dispose of an
15 interest in real property or a right incident to real property;

16 C. pledge or mortgage an interest in real property
17 or a right incident to real property as security to borrow
18 money or pay, renew or extend the time of payment of a debt of
19 the principal or a debt guaranteed by the principal;

20 D. release, assign, satisfy or enforce by
21 litigation or otherwise a mortgage, deed of trust, conditional
22 sale contract, encumbrance, lien or other claim to real
23 property that exists or is asserted;

24 E. manage or conserve an interest in real property
25 or a right incident to real property owned or claimed to be

.164258.3

underscored material = new
[bracketed material] = delete

1 owned by the principal, including:

2 (1) insuring against liability or casualty or
3 other loss;

4 (2) obtaining or regaining possession of or
5 protecting the interest or right by litigation or otherwise;

6 (3) paying, assessing, compromising or
7 contesting taxes or assessments or applying for and receiving
8 refunds in connection with taxes or assessments; and

9 (4) purchasing supplies, hiring assistance or
10 labor and making repairs or alterations to the real property;

11 F. use, develop, alter, replace, remove, erect or
12 install structures or other improvements upon real property in
13 or incident to which the principal has, or claims to have, an
14 interest or right;

15 G. participate in a reorganization with respect to
16 real property or an entity that owns an interest in real
17 property or a right incident to real property and receive, hold
18 and act with respect to stocks and bonds or other property
19 received in a plan of reorganization, including:

20 (1) selling or otherwise disposing of them;

21 (2) exercising or selling an option, right of
22 conversion or similar right with respect to them; and

23 (3) exercising any voting rights in person or
24 by proxy;

25 H. change the form of title of an interest in real

.164258.3

underscoring material = new
[bracketed material] = delete

1 property or a right incident to real property; and

2 I. dedicate to public use, with or without
3 consideration, easements or other real property in which the
4 principal has, or claims to have, an interest.

5 Section 205. TANGIBLE PERSONAL PROPERTY.--Unless the
6 power of attorney otherwise provides, language in a power of
7 attorney granting general authority with respect to tangible
8 personal property authorizes the agent to:

9 A. demand, buy, receive, accept as a gift or as
10 security for an extension of credit or otherwise acquire or
11 reject ownership or possession of tangible personal property or
12 an interest in tangible personal property;

13 B. sell, exchange, convey with or without
14 covenants, representations or warranties, quitclaim, release,
15 surrender, create a security interest in, grant options
16 concerning, lease, sublease or otherwise dispose of tangible
17 personal property or an interest in tangible personal property;

18 C. grant a security interest in tangible personal
19 property or an interest in tangible personal property as
20 security to borrow money or pay, renew or extend the time of
21 payment of a debt of the principal or a debt guaranteed by the
22 principal;

23 D. release, assign, satisfy or enforce by
24 litigation or otherwise a security interest, lien or other
25 claim on behalf of the principal, with respect to tangible

.164258.3

underscored material = new
[bracketed material] = delete

1 personal property or an interest in tangible personal property;

2 E. manage or conserve tangible personal property or
3 an interest in tangible personal property on behalf of the
4 principal, including:

5 (1) insuring against liability or casualty or
6 other loss;

7 (2) obtaining or regaining possession of or
8 protecting the property or interest, by litigation or
9 otherwise;

10 (3) paying, assessing, compromising or
11 contesting taxes or assessments or applying for and receiving
12 refunds in connection with taxes or assessments;

13 (4) moving the property from place to place;

14 (5) storing the property for hire or on a
15 gratuitous bailment; and

16 (6) using and making repairs, alterations or
17 improvements to the property; and

18 F. change the form of title of an interest in
19 tangible personal property.

20 Section 206. STOCKS AND BONDS.--Unless the power of
21 attorney otherwise provides, language in a power of attorney
22 granting general authority with respect to stocks and bonds
23 authorizes the agent to:

24 A. buy, sell and exchange stocks and bonds;

25 B. establish, continue, modify or terminate an

.164258.3

underscored material = new
[bracketed material] = delete

1 account with respect to stocks and bonds;

2 C. pledge stocks and bonds as security to borrow,
3 pay, renew or extend the time of payment of a debt of the
4 principal;

5 D. receive certificates and other evidences of
6 ownership with respect to stocks and bonds; and

7 E. exercise voting rights with respect to stocks
8 and bonds in person or by proxy, enter into voting trusts, and
9 consent to limitations on the right to vote.

10 Section 207. COMMODITIES AND OPTIONS.--Unless the power
11 of attorney otherwise provides, language in a power of attorney
12 granting general authority with respect to commodities and
13 options authorizes the agent to:

14 A. buy, sell, exchange, assign, settle and exercise
15 commodity futures contracts and call or put options on stocks
16 or stock indexes traded on a regulated option exchange; and

17 B. establish, continue, modify and terminate option
18 accounts.

19 Section 208. BANKS AND OTHER FINANCIAL INSTITUTIONS.--
20 Unless the power of attorney otherwise provides, language in a
21 power of attorney granting general authority with respect to
22 banks and other financial institutions authorizes the agent to:

23 A. continue, modify and terminate an account or
24 other banking arrangement made by or on behalf of the
25 principal;

.164258.3

underscoring material = new
[bracketed material] = delete

1 B. establish, modify and terminate an account or
2 other banking arrangement with a bank, trust company, savings
3 and loan association, credit union, thrift company, brokerage
4 firm or other financial institution selected by the agent;

5 C. contract for services available from a financial
6 institution, including renting a safe deposit box or space in a
7 vault;

8 D. withdraw, by check, order, electronic funds
9 transfer or otherwise, money or property of the principal
10 deposited with or left in the custody of a financial
11 institution;

12 E. receive statements of account, vouchers, notices
13 and similar documents from a financial institution and act with
14 respect to them;

15 F. enter a safe deposit box or vault and withdraw
16 or add to the contents;

17 G. borrow money and pledge as security personal
18 property of the principal necessary to borrow money or to pay,
19 renew or extend the time of payment of a debt of the principal
20 or of a debt guaranteed by the principal;

21 H. make, assign, draw, endorse, discount, guarantee
22 and negotiate promissory notes, checks, drafts and other
23 negotiable or nonnegotiable paper of the principal or payable
24 to the principal or the principal's order, transfer money,
25 receive the cash or other proceeds of those transactions and

.164258.3

underscoring material = new
[bracketed material] = delete

1 accept a draft drawn by a person upon the principal and pay it
2 when due;

3 I. receive for the principal and act upon a sight
4 draft, warehouse receipt or other document of title, whether
5 tangible or electronic, or other negotiable or nonnegotiable
6 instrument;

7 J. apply for, receive and use letters of credit,
8 credit and debit cards, electronic transaction authorizations
9 and traveler's checks from a financial institution and give an
10 indemnity or other agreement in connection with letters of
11 credit; and

12 K. consent to an extension of the time of payment
13 with respect to commercial paper or a financial transaction
14 with a financial institution.

15 Section 209. OPERATION OF ENTITY OR BUSINESS.--Subject to
16 the terms of a document or an agreement governing an entity or
17 an entity ownership interest, and unless the power of attorney
18 otherwise provides, language in a power of attorney granting
19 general authority with respect to operation of an entity or
20 business authorizes the agent to:

21 A. operate, buy, sell, enlarge, reduce or terminate
22 an ownership interest;

23 B. perform a duty or discharge a liability and
24 exercise in person or by proxy a right, power, privilege or
25 option that the principal has, may have or claims to have;

.164258.3

1 C. enforce the terms of an ownership agreement;

2 D. initiate, participate in and submit to
3 alternative dispute resolution; settle; and oppose, propose or
4 accept a compromise with respect to litigation to which the
5 principal is a party because of an ownership interest;

6 E. exercise in person or by proxy, or enforce by
7 litigation or otherwise, a right, power, privilege or option
8 the principal has or claims to have as the holder of stocks and
9 bonds;

10 F. initiate, participate in, submit to alternative
11 dispute resolution, settle, oppose or propose or accept a
12 compromise with respect to litigation to which the principal is
13 a party concerning stocks and bonds;

14 G. with respect to an entity or business owned
15 solely by the principal:

16 (1) continue, modify, renegotiate, extend and
17 terminate a contract made by or on behalf of the principal with
18 respect to the entity or business before execution of the power
19 of attorney;

20 (2) determine:

21 (a) the location of its operation;

22 (b) the nature and extent of its
23 business;

24 (c) the methods of manufacturing,
25 selling, merchandising, financing, accounting and advertising

1 employed in its operation;

2 (d) the amount and types of insurance
3 carried; and

4 (e) the mode of engaging, compensating
5 and dealing with its employees and accountants, attorneys or
6 other advisors;

7 (3) change the name or form of organization
8 under which the entity or business is operated and enter into
9 an ownership agreement with other persons to take over all or
10 part of the operation of the entity or business; and

11 (4) demand and receive money due or claimed by
12 the principal or on the principal's behalf in the operation of
13 the entity or business and control and disburse the money in
14 the operation of the entity or business;

15 H. put additional capital into an entity or
16 business in which the principal has an interest;

17 I. join in a plan of reorganization, consolidation,
18 conversion, domestication or merger of the entity or business;

19 J. sell or liquidate all or part of an entity or
20 business;

21 K. establish the value of an entity or business
22 under a buy-out agreement to which the principal is a party;

23 L. prepare, sign, file and deliver reports,
24 compilations of information, returns or other papers with
25 respect to an entity or business and make related payments; and

.164258.3

underscored material = new
[bracketed material] = delete

1 M. pay, compromise or contest taxes, assessments,
2 fines or penalties and perform any other act to protect the
3 principal from illegal or unnecessary taxation, assessments,
4 fines or penalties, with respect to an entity or business,
5 including attempts to recover, in any manner permitted by law,
6 money paid before or after the execution of the power of
7 attorney.

8 Section 210. INSURANCE AND ANNUITIES.--Unless the power
9 of attorney otherwise provides, language in a power of attorney
10 granting general authority with respect to insurance and
11 annuities authorizes the agent to:

12 A. continue, pay the premium or make a contribution
13 on, modify, exchange, rescind, release or terminate a contract
14 procured by or on behalf of the principal that insures or
15 provides an annuity to either the principal or another person,
16 whether or not the principal is a beneficiary under the
17 contract;

18 B. procure new, different and additional contracts
19 of insurance and annuities for the principal and the
20 principal's spouse, children and other dependents and select
21 the amount, type of insurance or annuity and mode of payment;

22 C. pay the premium or make a contribution on,
23 modify, exchange, rescind, release or terminate a contract of
24 insurance or annuity procured by the agent;

25 D. apply for and receive a loan secured by a

.164258.3

underscored material = new
[bracketed material] = delete

1 contract of insurance or annuity;

2 E. surrender and receive the cash surrender value
3 on a contract of insurance or annuity;

4 F. exercise an election;

5 G. exercise investment powers available under a
6 contract of insurance or annuity;

7 H. change the manner of paying premiums on a
8 contract of insurance or annuity;

9 I. change or convert the type of insurance or
10 annuity with respect to which the principal has or claims to
11 have authority described in this section;

12 J. apply for and procure a benefit or assistance
13 under a statute or regulation to guarantee or pay premiums of a
14 contract of insurance on the life of the principal;

15 K. collect, sell, assign, hypothecate, borrow
16 against or pledge the interest of the principal in a contract
17 of insurance or annuity;

18 L. select the form and timing of the payment of
19 proceeds from a contract of insurance or annuity; and

20 M. pay, from proceeds or otherwise, compromise or
21 contest and apply for refunds in connection with a tax or
22 assessment levied by a taxing authority with respect to a
23 contract of insurance or annuity or its proceeds or liability
24 accruing by reason of the tax or assessment.

25 Section 211. ESTATES, TRUSTS AND OTHER BENEFICIAL

.164258.3

underscored material = new
[bracketed material] = delete

1 INTERESTS.--

2 A. As used in this section, "estates, trusts and
3 other beneficial interests" means a trust, probate estate,
4 guardianship, conservatorship, escrow or custodianship or a
5 fund from which the principal is, may become, or claims to be
6 entitled to a share or payment.

7 B. Unless the power of attorney otherwise provides,
8 language in a power of attorney granting general authority with
9 respect to estates, trusts and other beneficial interests
10 authorizes the agent to:

11 (1) accept, receive, receipt for, sell,
12 assign, pledge or exchange a share in or payment from the fund;

13 (2) demand or obtain money or another thing of
14 value to which the principal is, may become or claims to be
15 entitled by reason of the fund, by litigation or otherwise;

16 (3) exercise for the benefit of the principal
17 a presently exercisable general power of appointment held by
18 the principal;

19 (4) initiate, participate in, submit to
20 alternative dispute resolution, settle, oppose or propose or
21 accept a compromise with respect to litigation to ascertain the
22 meaning, validity or effect of a deed, will, declaration of
23 trust or other instrument or transaction affecting the interest
24 of the principal;

25 (5) initiate, participate in, submit to

.164258.3

underscored material = new
[bracketed material] = delete

1 alternative dispute resolution, settle, oppose or propose or
2 accept a compromise with respect to litigation to remove,
3 substitute or surcharge a fiduciary;

4 (6) conserve, invest, disburse or use anything
5 received for an authorized purpose; and

6 (7) transfer an interest of the principal in
7 real property, stocks and bonds, accounts with financial
8 institutions or securities intermediaries, insurance, annuities
9 and other property to the trustee of a revocable trust created
10 by the principal as settlor.

11 Section 212. CLAIMS AND LITIGATION.--Unless the power of
12 attorney otherwise provides, language in a power of attorney
13 granting general authority with respect to claims and
14 litigation authorizes the agent to:

15 A. assert and maintain before a court or
16 administrative agency a claim, claim for relief, cause of
17 action, counterclaim, offset, recoupment or defense, including
18 an action to recover property or other thing of value, recover
19 damages sustained by the principal, eliminate or modify tax
20 liability or seek an injunction, specific performance or other
21 relief;

22 B. bring an action to determine adverse claims or
23 intervene or otherwise participate in litigation;

24 C. seek an attachment, garnishment, order of arrest
25 or other preliminary, provisional or intermediate relief and

.164258.3

1 use an available procedure to effect or satisfy a judgment,
2 order or decree;

3 D. make or accept a tender, offer of judgment or
4 admission of facts, submit a controversy on an agreed statement
5 of facts, consent to examination and bind the principal in
6 litigation;

7 E. submit to alternative dispute resolution, settle
8 and propose or accept a compromise;

9 F. waive the issuance and service of process upon
10 the principal, accept service of process, appear for the
11 principal, designate persons upon which process directed to the
12 principal may be served, execute and file or deliver
13 stipulations on the principal's behalf, verify pleadings, seek
14 appellate review, procure and give surety and indemnity bonds,
15 contract and pay for the preparation and printing of records
16 and briefs and receive, execute and file or deliver a consent,
17 waiver, release, confession of judgment, satisfaction of
18 judgment, notice, agreement or other instrument in connection
19 with the prosecution, settlement or defense of a claim or
20 litigation;

21 G. act for the principal with respect to bankruptcy
22 or insolvency, whether voluntary or involuntary, concerning the
23 principal or some other person, or with respect to a
24 reorganization, receivership or application for the appointment
25 of a receiver or trustee that affects an interest of the

.164258.3

underscored material = new
[bracketed material] = delete

1 principal in property or other thing of value;

2 H. pay a judgment, award or order against the
3 principal or a settlement made in connection with a claim or
4 litigation; and

5 I. receive money or other thing of value paid in
6 settlement of or as proceeds of a claim or litigation.

7 Section 213. PERSONAL AND FAMILY MAINTENANCE.--

8 A. Unless the power of attorney otherwise provides,
9 language in a power of attorney granting general authority with
10 respect to personal and family maintenance authorizes the agent
11 to:

12 (1) perform the acts necessary to maintain the
13 customary standard of living of the principal, the principal's
14 spouse and the following individuals, whether living when the
15 power of attorney is executed or later born:

16 (a) the principal's children;

17 (b) other individuals legally entitled
18 to be supported by the principal; and

19 (c) the individuals whom the principal
20 has customarily supported or indicated the intent to support;

21 (2) make periodic payments of child support
22 and other family maintenance required by a court or
23 governmental agency or an agreement to which the principal is a
24 party;

25 (3) provide living quarters for the

.164258.3

underscoring material = new
[bracketed material] = delete

1 individuals described in Paragraph (1) of this subsection by:

2 (a) purchase, lease or other contract;

3 or

4 (b) paying the operating costs,

5 including interest, amortization payments, repairs,

6 improvements and taxes, for premises owned by the principal or

7 occupied by those individuals;

8 (4) provide normal domestic help, usual

9 vacations and travel expenses and funds for shelter, clothing,

10 food, appropriate education, including post-secondary and

11 vocational education, and other current living costs for the

12 individuals described in Paragraph (1) of this subsection;

13 (5) pay expenses for necessary health care and

14 custodial care on behalf of the individuals described in

15 Paragraph (1) of this subsection;

16 (6) act as the principal's personal

17 representative pursuant to the federal Health Insurance

18 Portability and Accountability Act, Sections 1171 through 1179

19 of the Social Security Act, 42 U.S.C. Section 1320d, as

20 amended, and applicable regulations, in making decisions

21 related to the past, present or future payment for the

22 provision of health care consented to by the principal or

23 anyone authorized under the law of this state to consent to

24 health care on behalf of the principal;

25 (7) continue any provision made by the

.164258.3

underscored material = new
[bracketed material] = delete

1 principal for automobiles or other means of transportation,
2 including registering, licensing, insuring and replacing them,
3 for the individuals described in Paragraph (1) of this
4 subsection;

5 (8) maintain credit and debit accounts for the
6 convenience of the individuals described in Paragraph (1) of
7 this subsection and open new accounts; and

8 (9) continue payments incidental to the
9 membership or affiliation of the principal in a religious
10 institution, club, society, order or other organization or
11 continue contributions to those organizations.

12 B. Authority with respect to personal and family
13 maintenance is neither dependent upon, nor limited by,
14 authority that an agent may or may not have with respect to
15 gifts under the Uniform Power of Attorney Act.

16 Section 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL
17 OR MILITARY SERVICE.--

18 A. As used in this section, "benefits from
19 governmental programs or civil or military service" means any
20 benefit, program or assistance provided under a statute or
21 regulation, including social security, medicare and medicaid.

22 B. Unless the power of attorney otherwise provides,
23 language in a power of attorney granting general authority with
24 respect to benefits from governmental programs or civil or
25 military service authorizes the agent to:

.164258.3

underscored material = new
[bracketed material] = delete

1 (1) execute vouchers in the name of the
2 principal for allowances and reimbursements payable by the
3 United States or a foreign government or by a state or
4 subdivision of a state to the principal, including allowances
5 and reimbursements for transportation of the individuals
6 described in Paragraph (1) of Subsection A of Section 213 of
7 the Uniform Power of Attorney Act, and for shipment of their
8 household effects;

9 (2) take possession and order the removal and
10 shipment of property of the principal from a post, warehouse,
11 depot, dock or other place of storage or safekeeping, either
12 governmental or private, and execute and deliver a release,
13 voucher, receipt, bill of lading, shipping ticket, certificate
14 or other instrument for that purpose;

15 (3) enroll in, apply for, select, reject,
16 change, amend or discontinue, on the principal's behalf, a
17 benefit or program;

18 (4) prepare, file and maintain a claim of the
19 principal for a benefit or assistance, financial or otherwise,
20 to which the principal may be entitled under a statute or
21 regulation;

22 (5) initiate, participate in, submit to
23 alternative dispute resolution, settle, oppose or propose or
24 accept a compromise with respect to litigation concerning any
25 benefit or assistance the principal may be entitled to receive

.164258.3

underscoring material = new
[bracketed material] = delete

1 under a statute or regulation; and

2 (6) receive the financial proceeds of a claim
3 described in Paragraph (4) of this subsection and conserve,
4 invest, disburse or use for a lawful purpose anything so
5 received.

6 Section 215. RETIREMENT PLANS.--

7 A. As used in this section, "retirement plan" means
8 a plan or account created by an employer, the principal or
9 another individual to provide retirement benefits or deferred
10 compensation of which the principal is a participant,
11 beneficiary or owner, including a plan or account under the
12 following sections of the Internal Revenue Code:

13 (1) an individual retirement account under
14 Section 408 of the Internal Revenue Code of 1986, as amended;

15 (2) a Roth individual retirement account under
16 Section 408A of the Internal Revenue Code of 1986, as amended;

17 (3) a deemed individual retirement account
18 under Section 408(q) of the Internal Revenue Code of 1986, as
19 amended;

20 (4) an annuity or mutual fund custodial
21 account under Section 403(b) of the Internal Revenue Code of
22 1986, as amended;

23 (5) a pension, profit-sharing, stock bonus or
24 other retirement plan qualified under Section 401(a) of the
25 Internal Revenue Code of 1986, as amended;

.164258.3

underscored material = new
[bracketed material] = delete

1 (6) a plan under Section 457(b) of the
2 Internal Revenue Code of 1986, as amended; and

3 (7) a nonqualified deferred compensation plan
4 under Section 409A of the Internal Revenue Code of 1986, as
5 amended.

6 B. Unless the power of attorney otherwise provides,
7 language in a power of attorney granting general authority with
8 respect to retirement plans authorizes the agent to:

9 (1) select the form and timing of payments
10 under a retirement plan and withdraw benefits from a plan;

11 (2) make a rollover, including a direct
12 trustee-to-trustee rollover, of benefits from one retirement
13 plan to another;

14 (3) establish a retirement plan in the
15 principal's name;

16 (4) make contributions to a retirement plan;

17 (5) exercise investment powers available under
18 a retirement plan; and

19 (6) borrow from, sell assets to or purchase
20 assets from a retirement plan.

21 Section 216. TAXES.--Unless the power of attorney
22 otherwise provides, language in a power of attorney granting
23 general authority with respect to taxes authorizes the agent
24 to:

25 A. prepare, sign and file federal, state, local and

.164258.3

underscoring material = new
[bracketed material] = delete

1 foreign income, gift, payroll, property, Federal Insurance
2 Contributions Act and other tax returns, claims for refunds,
3 requests for extension of time, petitions regarding tax matters
4 and any other tax-related documents, including receipts,
5 offers, waivers, consents, including consents and agreements
6 under Section 2032A of the Internal Revenue Code of 1986, as
7 amended, closing agreements and any power of attorney required
8 by the internal revenue service or other taxing authority with
9 respect to a tax year upon which the statute of limitations has
10 not run and the following twenty-five tax years;

11 B. pay taxes due, collect refunds, post bonds,
12 receive confidential information and contest deficiencies
13 determined by the internal revenue service or other taxing
14 authority;

15 C. exercise any election available to the principal
16 under federal, state, local or foreign tax law; and

17 D. act for the principal in all tax matters for all
18 periods before the internal revenue service or other taxing
19 authority.

20 Section 217. GIFTS.--

21 A. As used in this section, a gift "for the benefit
22 of" a person includes a gift to a trust, an account under the
23 Uniform Transfers to Minors Act and a tuition savings account
24 or prepaid tuition plan as defined under Section 529 of the
25 Internal Revenue Code of 1986, as amended.

.164258.3

underscoring material = new
[bracketed material] = delete

1 B. Unless the power of attorney otherwise provides,
2 language in a power of attorney granting general authority with
3 respect to gifts authorizes the agent only to:

4 (1) make outright to or for the benefit of a
5 person a gift of any of the principal's property, including by
6 the exercise of a presently exercisable general power of
7 appointment held by the principal, in an amount per donee not
8 to exceed the annual dollar limits of the federal gift tax
9 exclusion under Section 2503(b) of the Internal Revenue Code of
10 1986, as amended, without regard to whether the federal gift
11 tax exclusion applies to the gift, or if the principal's spouse
12 agrees to consent to a split gift pursuant to Section 2513 of
13 the Internal Revenue Code of 1986, as amended, in an amount per
14 donee not to exceed twice the annual federal gift tax exclusion
15 limit; and

16 (2) consent, pursuant to Section 2513 of the
17 Internal Revenue Code of 1986, as amended, to the splitting of
18 a gift made by the principal's spouse in an amount per donee
19 not to exceed the aggregate annual gift tax exclusions for both
20 spouses.

21 C. An agent may make a gift of the principal's
22 property only as the agent determines is consistent with the
23 principal's objectives if actually known by the agent and, if
24 unknown, as the agent determines is consistent with the
25 principal's best interest based on all relevant factors,

.164258.3

underscored material = new
[bracketed material] = delete

1 including:

2 (1) the value and nature of the principal's
3 property;

4 (2) the principal's foreseeable obligations
5 and need for maintenance;

6 (3) minimization of taxes, including income,
7 estate, inheritance, generation-skipping transfer and gift
8 taxes;

9 (4) eligibility for a benefit, a program or
10 assistance under a statute or regulation; and

11 (5) the principal's personal history of making
12 or joining in making gifts.

13 ARTICLE 3

14 STATUTORY FORMS

15 Section 301. STATUTORY FORM POWER OF ATTORNEY.--A

16 document substantially in the following form may be used to
17 create a statutory form power of attorney that has the meaning
18 and effect prescribed by the Uniform Power of Attorney Act:

19 "NEW MEXICO

20 STATUTORY FORM POWER OF ATTORNEY

21 IMPORTANT INFORMATION

22 This power of attorney authorizes another person (your
23 agent) to make decisions concerning your property for you (the
24 principal). Your agent will be able to make decisions and act
25 with respect to your property (including your money) whether or

.164258.3

underscoring material = new
[bracketed material] = delete

1 not you are able to act for yourself. The meaning of authority
2 over subjects listed on this form is explained in the Uniform
3 Power of Attorney Act.

4 This power of attorney does not authorize the agent to
5 make health care decisions for you.

6 You should select someone you trust to serve as your
7 agent. Unless you specify otherwise, generally the agent's
8 authority will continue until you die or revoke the power of
9 attorney or the agent resigns or is unable to act for you.

10 Your agent is entitled to reasonable compensation unless
11 you state otherwise in the Special Instructions.

12 This form provides for designation of one agent. If you
13 wish to name more than one agent, you may name a co-agent in
14 the Special Instructions. Co-agents are not required to act
15 together unless you include that requirement in the Special
16 Instructions.

17 If your agent is unable or unwilling to act for you, your
18 power of attorney will end unless you have named a successor
19 agent. You may also name a second successor agent.

20 This power of attorney becomes effective immediately
21 unless you state otherwise in the Special Instructions.

22 If you have questions about the power of attorney or the
23 authority you are granting to your agent, you should seek legal
24 advice before signing this form.

25 DESIGNATION OF AGENT

.164258.3

underscored material = new
[bracketed material] = delete

1 I, _____,

2 (Your Name)

3 name the following person as my agent:

4 Name of Agent: _____

5 Agent's Address: _____

6 Agent's Telephone Number: _____

7 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

8 If my agent is unable or unwilling to act for me, I name
9 as my successor agent:

10 Name of Successor Agent: _____

11 Successor Agent's Address: _____

12 Successor Agent's Telephone Number: _____

13 If my successor agent is unable or unwilling to act for
14 me, I name as my second successor agent:

15 Name of Second Successor Agent: _____

16 Second Successor Agent's Address: _____

17 Second Successor Agent's Telephone Number: _____

18 GRANT OF GENERAL AUTHORITY

19 I grant my agent and any successor agent general authority
20 to act for me with respect to the following subjects as defined
21 in the Uniform Power of Attorney Act:

22 (INITIAL each subject you want to include in the agent's
23 general authority. If you wish to grant general authority over
24 all of the subjects, you may initial "All Preceding Subjects"
25 instead of initialing each subject.)

.164258.3

underscoring material = new
[bracketed material] = delete

- 1 Real Property
- 2 Tangible Personal Property
- 3 Stocks and Bonds
- 4 Commodities and Options
- 5 Banks and Other Financial Institutions
- 6 Operation of Entity or Business
- 7 Insurance and Annuities
- 8 Estates, Trusts and Other Beneficial Interests
- 9 Claims and Litigation
- 10 Personal and Family Maintenance
- 11 Benefits from Governmental Programs or Civil or Military
- 12 Service
- 13 Retirement Plans
- 14 Taxes
- 15 All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke or terminate an inter vivos trust
- Make a gift, subject to the limitations of Section 217

.164258.3

underscored material = new
[bracketed material] = delete

- 1 of the Uniform Power of Attorney Act and any special
- 2 instructions in this power of attorney
- 3 () Create or change rights of survivorship
- 4 () Create or change a beneficiary designation
- 5 () Authorize another person to exercise the authority
- 6 granted under this power of attorney
- 7 () Waive the principal's right to be a beneficiary of a
- 8 joint and survivor annuity, including a survivor benefit
- 9 under a retirement plan
- 10 () Exercise fiduciary powers that the principal has
- 11 authority to delegate
- 12 () Disclaim or refuse an interest in property, including a
- 13 power of appointment

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse or descendant
MAY NOT use my property to benefit the agent or a person to
whom the agent owes an obligation of support unless I have
included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

21 _____

22 _____

23 _____

24 _____

25 _____

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a conservator or guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for conservator of my estate:

Nominee's Address: _____

Nominee's Telephone Number: _____

Name of Nominee for guardian of my person: _____

Nominee's Address: _____

Nominee's Telephone Number: _____

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature: _____

Date: _____

Your Name Printed: _____

Your Address: _____

.164258.3

underscored material = new
[bracketed material] = delete

1 Your Telephone Number: _____

2 State of _____

3 (County) of _____

4 This instrument was acknowledged before me on

5 _____, _____ (Date)

6 by _____ (Name of Principal).

7 (Seal, if any)

8 Signature of notarial officer:

9 _____

10 My commission expires: _____

11 IMPORTANT INFORMATION FOR AGENT

12 Agent's Duties

13 When you accept the authority granted under this power
14 of attorney, a special legal relationship is created between
15 you and the principal. This relationship imposes upon you
16 legal duties that continue until you resign or the power of
17 attorney is terminated or revoked. You must:

- 18 1. do what you know the principal reasonably expects you
19 to do with the principal's property or, if you do not
20 know the principal's expectations, act in the
21 principal's best interest;
- 22 2. act in good faith;
- 23 3. do nothing beyond the authority granted in this power
24 of attorney; and
- 25 4. disclose your identity as an agent whenever you act

underscored material = new
[bracketed material] = delete

1 for the principal by writing or printing the name of
2 the principal and signing your own name as "agent" in
3 the following manner:

4 _____ by _____ as Agent
5 (Principal's Name) (Your Signature)

6 Unless the Special Instructions in this power of attorney
7 state otherwise, you must also:

- 8 1. act loyally for the principal's benefit;
- 9 2. avoid conflicts that would impair your ability to act
10 in the principal's best interest;
- 11 3. act with care, competence and diligence;
- 12 4. keep a record of all receipts, disbursements and
13 transactions made on behalf of the principal;
- 14 5. cooperate with any person that has authority to make
15 health care decisions for the principal to do what
16 you know the principal reasonably expects or, if you
17 do not know the principal's expectations, to act in
18 the principal's best interest; and
- 19 6. attempt to preserve the principal's estate plan if
20 you know the plan and preserving the plan is
21 consistent with the principal's best interest.

22 Termination of Agent's Authority

23 You must stop acting on behalf of the principal if you
24 learn of any event that terminates this power of attorney or
25 your authority under this power of attorney. Events that

1 terminate a power of attorney or your authority to act under a
2 power of attorney include:

- 3 1. death of the principal;
- 4 2. the principal's revocation of the power of attorney
5 or your authority;
- 6 3. the occurrence of a termination event stated in the
7 power of attorney;
- 8 4. the purpose of the power of attorney is fully
9 accomplished; or
- 10 5. if you are married to the principal, a legal action
11 is filed with a court to end your marriage, or for
12 your legal separation, unless the Special
13 Instructions in this power of attorney state that
14 such an action will not terminate your authority.

15 Liability of Agent

16 The meaning of the authority granted to you is defined in
17 the Uniform Power of Attorney Act. If you violate the Uniform
18 Power of Attorney Act or act outside the authority granted, you
19 may be liable for any damages caused by your violation.

20 If there is anything about this document or your duties
21 that you do not understand, you should seek legal advice."

22 Section 302. AGENT'S CERTIFICATION.--The following
23 optional form may be used by an agent to certify facts
24 concerning a power of attorney:

25 "AGENT'S CERTIFICATION AS TO THE VALIDITY OF

.164258.3

underscoring material = new
[bracketed material] = delete

POWER OF ATTORNEY AND AGENT'S AUTHORITY

State of _____

(County) of _____

I, _____ (Name of Agent),

certify under penalty of perjury that

_____ (Name of Principal) granted me
authority as an agent or successor agent in a power of attorney
dated _____.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power
of Attorney or my authority to act under the Power of Attorney
and the Power of Attorney and my authority to act under the
Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become
effective upon the happening of an event or contingency, the
event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent
is no longer able or willing to serve; and

(4) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

underscored material = new
[bracketed material] = delete

1 Agent's Signature: _____ (Date)

2 Agent's Name Printed: _____

3 Agent's Address: _____

4 _____

5 Agent's Telephone Number: _____

6 This instrument was acknowledged before me on _____

7 (Date)

8 by _____ (Name of Agent).

9 Signature of notarial officer:

10 _____

11 (Seal, if any)

12 My commission expires: _____."

13 ARTICLE 4

14 MISCELLANEOUS PROVISIONS

15 Section 401. UNIFORMITY OF APPLICATION AND
16 CONSTRUCTION.--In applying and construing the Uniform Power of
17 Attorney Act, consideration must be given to the need to
18 promote uniformity of the law with respect to its subject
19 matter among the states that enact it.

20 Section 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
21 AND NATIONAL COMMERCE ACT.--The Uniform Power of Attorney Act
22 modifies, limits and supersedes the federal Electronic
23 Signatures in Global and National Commerce Act, 15 U.S.C.
24 Section 7001 et seq., but does not modify, limit or supersede
25 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or

.164258.3

underscored material = new
[bracketed material] = delete

1 authorize electronic delivery of any of the notices described
2 in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

3 Section 403. EFFECT ON EXISTING POWERS OF ATTORNEY.--
4 Except as otherwise provided in the Uniform Power of Attorney
5 Act, on July 1, 2007:

6 A. the Uniform Power of Attorney Act applies to a
7 power of attorney created before, on or after July 1, 2007;

8 B. the Uniform Power of Attorney Act applies to a
9 judicial proceeding concerning a power of attorney commenced on
10 or after July 1, 2007;

11 C. the Uniform Power of Attorney Act applies to a
12 judicial proceeding concerning a power of attorney commenced
13 before July 1, 2007 unless the court finds that application of
14 a provision of that act would substantially interfere with the
15 effective conduct of the judicial proceeding or prejudice the
16 rights of a party, in which case that provision does not apply
17 and the superseded law applies; and

18 D. an act done before July 1, 2007 is not affected
19 by the Uniform Power of Attorney Act.

20 Section 404. REPEAL.--Sections 45-5-501 through 45-5-617
21 NMSA 1978 (being Laws 1995, Chapter 210, Sections 58 through
22 79) are repealed.

23 Section 405. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2007.